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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION
DOCKETS

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In the matter of _____)
)
Notice of Alternative Policy Options for _____)
Managing Capacity at LaGuardia Airport _____)
and Proposed Extension of the Lottery Allocation _____)
_____)
Docket FAA-01-9852 - 20

COMMENTS OF UNITED AIR LINES, INC.

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DATED: July 12, 2001

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United Air Lines, Inc. ("United") submits the following comments in response to the June 12, 2001 Notice issued by the Federal Aviation Administration ("FAA") seeking information about the "feasibility and effectiveness of . . . demand management options" to limit operations at New York's LaGuardia Airport. As part of such process, the FAA is also seeking comment on a proposal to extend the existing cap on Air 21 slot exemptions, adopted in November, 2000, and the allocation of those exemptions by lottery. These comments address only the FAA's proposal to extend the existing Air 21 exemption cap and lottery allocations through October 26, 2002.¹

¹ United notes that the Air Transport Association ("ATA") has requested that the FAA extend the existing August 13, 2001 date for submitting comments on Phase Two by 180 days to February 13, 2002. See Letter from Robert P. Warren, ATA, to Louise Maillett & John M. Rodgers dated June 20, 2001 (Docket FAA-01-9854); see also Letter from Deborah C. McElroy, Regional Airlines Association, to Louise Maillett dated July 9, 2001 (Docket OST-01-9854) (also requesting a 180-day extension). ATA states that the FAA's proposals raise "many complex legal, policy, economic, regulatory, and operational issues." Id. at 3. United supports ATA's request and agrees that commenters need more time to analyze and develop their respective positions on the FAA's Phase Two proposals than is afforded by the August 13, 2001 deadline. Moreover, given the likelihood that numerous interested parties will submit detailed comments, the FAA also need more time to study and analyze those comments to determine whether the

United is not opposed to an extension of the Air 21 exemption cap and existing lottery allocations, but strongly recommends against the establishment of a fixed, arbitrary deadline for such extension. As the FAA recognizes in the Notice, the use of congestion pricing to allocate airfield capacity raises complex public policy issues with far-reaching industry implications. United is concerned that if the FAA establishes an arbitrary deadline for extension of the interim cap on Air 21 exemptions while it considers congestion pricing alternatives to the current high density rule at LaGuardia, it may feel compelled to act without the thorough analysis these untested alternatives to the current allocation system require.² To avoid such a potential rush to judgment, United urges the FAA to extend the interim cap on Air 21 slot exemptions, and the related lottery allocations, for an indefinite period, rather than for the finite, and clearly arbitrary, period proposed in the Notice.

By proceeding in such manner, the FAA will ensure that the salutary interim cap on operations at LaGuardia remains in place pending the full consideration of potential alternatives to the existing capacity allocation regime. The FAA will also ensure that it will have adequate opportunity to undertake a comprehensive review of congestion

adoption of alternative demand management options is warranted than is afforded by the FAA's self-imposed October 26, 2002 deadline.

² In its June 12, 2001 Notice, the FAA acknowledges that, even if it were able to identify a preferred scheme within the proposed timeframe, it might not be possible to implement its chosen option prior to October 26, 2002. In that event, the FAA recognizes that it would be obliged to extend the current temporary system beyond that date. See 66 Fed. Reg. 31731, 31735 (June 12, 2001). This uncertainty underscores the apparently arbitrary nature of the FAA's self-imposed deadline. United submits that its proposed alternative approach would afford the FAA greater flexibility while also providing carriers with a more reliable timetable for planning purposes.

pricing alternatives to the existing allocation system without the pressure of having to complete such review by a self-imposed, arbitrary deadline.³

The FAA, having established a workable temporary exemption cap and allocation system, has resolved the need for an immediate solution to the problem of managing congestion at LaGuardia. Indeed, all available information indicates that the interim cap on hourly operations at LaGuardia is working and that the airport's acute delay problems have been effectively ameliorated.⁴ The issue now before the FAA is whether there is a need to replace the current administrative system for allocating capacity at LaGuardia to ensure that capacity will be efficiently and fairly allocated over the long term without adverse industry and consumer impact. In the shorter term, the interim exemption cap and further lottery proposed (supplemented, if necessary, with future lotteries along the same lines) should ensure that whatever capacity becomes available will be reallocated in an efficient, equitable manner consistent with the requirements of Air 21.

Moreover, if the FAA does ultimately adopt changes to the existing high density rule, it will need time to implement such alternative allocation system and carriers affected will have to be given a reasonable period of time to adjust their operations at

³ An indefinite extension would also avoid the FAA having to expend scarce agency staff resources to undertake a further rulemaking in the event it cannot complete its review of possible alternatives to the existing capacity allocation procedures in place at LaGuardia before the October 26, 2002 deadline proposed in the Notice.

⁴ As the FAA noted, "[f]ollowing the implementation of the reduced daily and hourly operating levels on January 31, 2001, delays have decreased by 71 percent compared to October 2000. . . . [O]n-time arrival performance for March 2001, as reported to the Department of Transportation, has improved by 13 percentage points over the October 2000 levels." 66 Fed. Reg. 31731, 31733 (June 12, 2001). See also *Aviation Daily*, July 3, 2001, at 1 (citing DOT's *Air Travel Consumer Report*, which found that, for the month of May 2001, LGA's 82% rate of on-time departures was five percentage points better than JFK's and close to the national average of 83.7%).

LaGuardia in response to those changes. Carriers gaining new access to LaGuardia under an alternative allocation system may need to acquire additional aircraft, hire crew (or bid new crew assignments), and publish new flight schedules. By the same token, carriers that might lose access would need to plan for the re-assignment of existing aircraft and crew to alternative services.

United is firmly persuaded that the FAA's proposal to extend the existing interim exemption cap only through October 26, 2002 does not provide the agency adequate time to assess fully possible alternatives to the existing allocation system, propose the adoption, through appropriate rulemaking procedures, of a replacement allocation system should the FAA ultimately be persuaded to adopt such a system, implement such replacement system, and provide affected carriers a reasonable period of time in which to adjust their LaGuardia operations.⁵ Indeed, even assuming the FAA can implement any new allocation system within just 90 days after adoption, and provide affected carriers only 120 days to implement new LaGuardia schedules -- the minimum time carriers should be afforded to avoid undue impact on the traveling public and affected employees

⁵ Findings contained in a new report by the General Accounting Office on the FAA rulemaking process strongly suggest that the FAA is unlikely to meet the October 26, 2002 deadline. The GAO analyzed a total of 76 significant rulemakings undertaken by the FAA between 1995 and 2000 and found that the "FAA took a median time of about 2½ years to proceed from formal initiation of the rulemaking process through publication of the final rule. . . . While FAA completed this process within 2½ years for half of its significant rules, the agency took 10 years or more to move from formal initiation of the rulemaking process through publication of the final rule for 6 of . . . 29 rules." *Aviation Rulemaking: Further Reform is Needed to Address Long-standing Problems*, GAO-01-821 (July 2001), at 9. In this case, the FAA has provided for a period of only 16½ months between publication of the June 12, 2001 Notice and the October 26, 2002 deadline for implementing any chosen slot allocation scheme. This timetable appears unrealistic, given the GAO's findings, and the "complex statutory, regulatory, and policy issues as well as difficult issues with respect to our international aviation obligations" (66 Fed. Reg. 31731, 31740 (June 12, 2001)) involved in this proceeding.

from having to cancel existing schedules -- a new rule would need to be in place at LaGuardia no later than January 9, 2002, less than five months after comments are now due in response to the Notice.

Certainly, four plus months is not enough time to address the complex economic, policy, legal and operational issues posed in the Notice. To ensure that the FAA will be in a position to address fully these complex issues without facing an arbitrary sunset date for the current hourly operations cap, United suggests that the FAA extend indefinitely the current exemption cap and system for allocation of exemptions by lottery.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce H. Rabinovitz", is written over a horizontal line.

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